

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	)
Mark Cooper et al.	) Group Art Unit: Not Yet Assigned
Serial No. 09/867,693	)
	) Examiner: Not Yet Assigned
Filing Date: May 31, 2001	)
	) Docket No. 003659.00009

For: **LYOPHILIZABLE AND ENHANCED COMPACTED NUCLEIC ACIDS**

**PETITION UNDER RULE 47(a)**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Applicants hereby petition the Assistant Commissioner to accept the following statement of facts in lieu of a signed declaration of inventor Maureen Costello. Dr. Maureen Costello refuses to sign the declaration for the above-captioned application.

The petition fee of \$130.00 as required by 37 C.F.R. § 1.17(h) is enclosed herewith. However, if the Patent Office determines that additional fees are due, the Assistant Commissioner is hereby authorized and directed to debit our Deposit Account No. 19-0733.

## STATEMENT OF FACTS

1. Ms. Jan Candelaria, manager, administration of Copernicus Therapeutics Inc., sent a copy of the Joint Declaration for Patent Application and Assignment to Dr. Costello by Federal Express on October 8, 2001. The papers sent by Federal Express could not be delivered to Dr. Costello. A copy of the memorandum sent with the Joint Declaration and Assignment to Dr. Costello indicates that the Joint Declaration for Patent Application and Assignment papers were enclosed for Dr. Costello's signature. See Exhibit 1. A Federal Express airbill was affixed to the Federal Express package sent to Dr. Costello on October 8, 2001. See Exhibit 2. The tracking number is indicated as 828748717952 on the top of the airbill. The tracking record of Federal Express package 828748717952 indicates that on October 9, 2001 at 09:56 the customer was not available or business was closed. See Exhibit 3. The package was returned to Ms. Candelaria because it could not be delivered to Dr. Costello. See Exhibit 4.
2. Ms. Candelaria sent a follow-up copy of the Joint Declaration for Patent Application and Assignment to Dr. Costello with a copy of the application on October 12, 2001 in a Federal Express package. See Exhibit 5. Ms. Candelaria included a memorandum in the Federal Express package. See Exhibit 6. The memorandum states that the Federal Express package contains a copy of the application with the signature pages. The Federal Express detailed tracking results indicate that the Joint Declaration for Patent Application, Assignment, and Patent Application papers were delivered on October 13, 2001 at 11:12. See Exhibit 7.
3. Dr. Costello did not return the executed documents to Ms. Candelaria.
4. I, Michelle Holmes-Son, spoke with Dr. Costello on November 12, 2001. I told Dr. Costello that I had a Federal Express tracking record that indicated that she had received the

Patent Application, Joint Declaration for Patent Application and Assignment papers for the above-mentioned application. I then asked her if she would sign the papers. Dr. Costello informed me that she “wants no part of it” and will “not sign it.” She also informed me that she had previously informed Robert Moen, President and CEO of Copernicus Therapeutics, Inc., and Mark Cooper, Senior Vice President, Science and Medical Affairs of Copernicus Therapeutics, Inc., that she will not sign the papers. A copy of my contemporaneous notes of the telephone conversation with Dr. Costello is attached. See Exhibit 8.

#### POINT TO BE REVIEWED

The point to be reviewed is whether the above-mentioned application should be accepted as complete even though one of the inventors, Maureen Costello, refuses to sign the Joint Declaration for Patent Application.

#### ACTION REQUESTED

Applicants request that this petition under 37 CFR 1.47 be accepted in lieu of Dr. Costello’s signed inventor’s declaration and that the application be considered as fulfilling the requirements for filing a nonprovisional application.

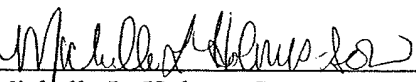
#### STATEMENT OF LAST KNOWN ADDRESS

The last known address for Dr. Costello is:

102 North Mansfield Avenue  
Margate City, NJ 08402

Respectfully submitted,

Date: November 13, 2001

By:   
Michelle L. Holmes-Son  
Registration No. 47,660

Banner & Witcoff, Ltd.  
1001 G Street, NW  
Washington, DC 20001  
202-508-9100

List of Exhibits

- Exhibit 1. October 8, 2001 memorandum from Jan Candelaria to Dr. Maureen Costello.
- Exhibit 2. Federal Express airbill for October 8, 2001 package.
- Exhibit 3. Tracking record of October 8, 2001 Federal Express package.
- Exhibit 4. Federal Express airbill of undelivered October 8, 2001 package.
- Exhibit 5. Federal Express airbill for October 12, 2001 package.
- Exhibit 6. October 12, 2001 memorandum from Jan Candelaria to Dr. Maureen Costello.
- Exhibit 7. Tracking record of October 12, 2001 Federal Express package.
- Exhibit 8. Notes of November 12, 2001 telephone conversation between Dr. Maureen Costello and Michelle Holmes-Son.



## MEMORANDUM

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**DATE:** October 8, 2001  
**TO:** Maureen Costello  
**FROM:** Jan Candelaria  
**SUBJECT:** Joint Declaration and Assignment Signatures for Patent Application

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Attached are copies of the Joint Declaration and Assignment pages for your signature. Please sign and return at your earliest convenience. Thanks.

Jan

**FedEx** USA Airbill

Tracking Number

8287 4871 7952

0215

SPH13

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1 From Please print and press hard

Date 10/8/01 Sender's FedEx Account Number

1975-6305-2

Sender's Name JAN CALDELLAIA Phone (216) 231-0227

Company COPERNICUS THERAPEUTICS INC

Address 11000 CEDAR AVE STE 145

City CLEVELAND

State OH ZIP 44106

2 Your Internal Billing Reference

First 24 characters will appear on invoice.

02100001

3 To

Recipient's Name Mureen Costello Phone (609) 822-7795

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Address 102 North Mansfield Ave

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City Margate City State NJ ZIP 08402

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Next business day

Late drop-off with next business morning delivery to select locations

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Second business day

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\*Call for Confirmation.

5 Packaging

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☐ FedEx Pak\*

Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sundry Pak

☐ Other Pkg. Includes FedEx Box, FedEx Tube and custom bag.

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☐ RESTRICTIONS

Available only for FedEx Priority Overnight and FedEx 2Day

☐ SUNDAY Delivery

☐ RESTRICTIONS

Available only for FedEx Priority Overnight and FedEx 2Day

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☐ RESTRICTIONS

Available only for FedEx Priority Overnight and FedEx 2Day

☐ HOLD Sunday

☐ RESTRICTIONS

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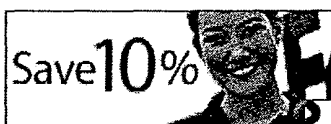
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**Delivery Date/Time**  
**Signed For By**  
**Service Type** Priority Letter

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Arrived at FedEx Destination Location EGG HARBOR TOWNSHIP NJ	10/09/2001 08:39	
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Held at Sort Facility INDIANAPOLIS IN	10/09/2001 02:47	
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Phone

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City WEGO HARBOR TWP

State NJ ZIP 08234

2 Your Internal Billing Reference 828748717952

3 To Recipient's Name Jan Candelaria Phone 216 231-0227

Company Copernicus Therapeutics Inc.

Address 11000 Cedar Ave Ste 145

City Cleveland State OH ZIP 44106

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Name JAN CANDELARIA Phone (216) 231-0227

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City CLEVELAND State OH ZIP 44106

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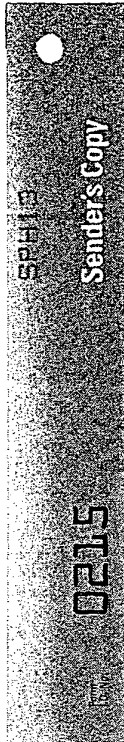
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Total Packages 1 Total Weight 1.16 \$ Total Declared Value\* .00

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## MEMORANDUM

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**DATE:** October 12, 2001  
**To:** Maureen Costello  
**FROM:** Jan Candelaria  
**SUBJECT:** Joint Declaration and Assignment Signatures for Patent Application

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Sorry to send a second copy but the patent attorney said I should have included a copy of the application with the signature pages. Please call if you have any questions. 216-231-0227

Jan



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**Reference Number**  
**Ship Date**  
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**Delivery Location** MARGATE CITY NJ  
**Delivery Date/Time** 10/13/2001 11:12  
**Signed For By** M.COSTELLO  
**Service Type** Priority Pak

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Arrived at FedEx Destination Location EGG HARBOR TOWNSHIP NJ	10/13/2001 09:07	
Package status EGG HARBOR TOWNSHIP NJ	10/13/2001 08:44	Package not due for delivery
Arrived at FedEx Destination Location EGG HARBOR TOWNSHIP NJ	10/13/2001 08:44	
Left FedEx Ramp PHILADELPHIA PA	10/13/2001 08:16	
Held at Sort Facility INDIANAPOLIS IN	10/13/2001 03:17	
Left FedEx Sort Facility INDIANAPOLIS IN	10/13/2001 03:15	
Left FedEx Sort Facility INDIANAPOLIS IN	10/13/2001 03:15	
Arrived at Sort Facility INDIANAPOLIS IN	10/13/2001 00:11	
Left FedEx Ramp CLEVELAND OH	10/12/2001 23:30	
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will not sign it  
told Robert Moen &  
Mark Cooper she will  
not sign